

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES S. GARNETT,

Petitioner,

v.

RICHARD MORGAN,

Respondent.

No. C05-1438MJP

ORDER GRANTING MOTION FOR
DISCOVERY AND MOTION TO
SUPPLEMENT THE RECORD

This matter comes before the Court on Petitioner's motion for additional discovery (Dkt. No. 38) and motion to supplement the record (Dkt. No. 39). The State opposes the motions. (Dkt. Nos. 40 & 41.) Having considered the motions and responses, Petitioner's consolidated reply (Dkt. No. 42), and the record herein, the Court GRANTS both motions.

Background

In August 2000, Mr. Garnett was convicted of first-degree murder of Dan Diorio. The prosecution's evidence included the live testimony of Kristine Stafford and the surreptitious tapes that Ms. Stafford made at the prosecution's behest. Ms. Stafford, a friend of Mr. Garnett's wife Kymberly, had worn a wire during conversations with Kymberly and elicited statements that implicated both Mr. Garnett and his wife in the murder. (Dkt. No. 12, Ex. 33, at 1191-1204.) Ms. Stafford also testified in person about those conversations. (Id.)

At trial, defense counsel sought to impeach Ms. Stafford by showing that prosecutors had quashed two of Ms. Stafford's outstanding warrants in exchange for her cooperation. (Id. at 1214.)

Following conviction, Mr. Garnett unsuccessfully appealed to the Washington Court of Appeals and Washington Supreme Court. (Dkt. 12, Exs. 5 & 10.) He then filed a personal restraint petition, which was denied by both courts. (Dkt. Nos. 16 & 23.) Finally, acting pro se, Mr. Garnett

1 filed a petition for writ of habeas corpus in this Court. (Dkt. No. 4.) One of his claims for habeas
 2 relief is that the prosecution deprived him of his Due Process rights under the Fourteenth Amendment
 3 by “withholding information.” (Dkt. No. 4 at 3, 22.)

4 On April 24, 2006, Magistrate Judge Benton issued an Report & Recommendation
 5 recommending that the habeas petition be denied. (Dkt. No. 17.) In October 2006, the Court
 6 appointed counsel to represent Mr. Garnett. On June 25, 2007, Mr. Garnett, through counsel, filed
 7 the present motion to supplement the record and motion for discovery. (Dk. Nos. 38, 39). The
 8 motion to supplement the record seeks to add evidence that a private foundation eventually gave Ms.
 9 Stafford \$5,000 for testifying against Mr. Garnett, and that prosecutors – if not Ms. Stafford herself –
 10 knew of this award by the time of trial but did not disclose it to the defense. The motion for
 11 discovery seeks discovery of prosecution and police files to determine whether Ms. Stafford received
 12 other undisclosed benefits and other evidence regarding Ms. Stafford.

13 Discussion

14 I. Motion for Additional Discovery

15 Pursuant to Rule 6 of the Rules Governing Section 2254 Cases in the United States District
 16 Courts, Petitioner requests that the Court permit discovery of the files of the Office of the Skagit
 17 County Prosecuting Attorney, the Mt. Vernon Police Department, and the Skagit County Sheriff’s
 18 Office regarding the investigation of Dan Diorio’s death, the prosecution of Mr. Garnett, and/or the
 19 prosecution of Mr. Garnett’s wife, Kymberly Garnett. Rule 6(a) provides: “A judge may, for good
 20 cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may
 21 limit the extent of discovery.”

22 Here, Mr. Garnett has shown good cause for conducting the discovery. First, contrary to the
 23 State’s suggestion, Mr. Garnett has sufficiently raised the issue of a Brady violation in his habeas
 24 petition for the purposes of this motion.¹ In his fifth ground for relief, Mr. Garnett argues that “the

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 26 ¹ Brady requires prosecutors to disclose material evidence favorable to the defense and
 material either to guilt or punishment. See Brady v. Maryland, 373 U.S. 83, 87 (1963); United States
v. Alvarez, 358 F.3d 1194, 1206 n.4 (9th Cir. 2004).

1 numerous instances of misconduct and mismanagement by the State and the trial court's abuse of
2 discretion, constituted a clear denial of Petitioner's Due Process rights." (Dkt. No. 4, at 23.)
3 Petitioner mentions "numerous instances of governmental misconduct, including withholding
4 information" (Id., at 22.) He also referenced these issues in his Personal Restraint Petition.
5 (See, e.g., Dkt. No. 12, Ex. 13, at 10, 16, 18, 19.) For the purposes of these discovery motions, the
6 Court concludes that Mr. Garnett has adequately raised this issue.

7 Second, given the nature of his request, it is reasonable and makes sense that before he
8 obtained assistance of counsel, Mr. Garnett was not able to fully develop the issue of whether the
9 prosecution withheld material information about a key witness. As Mr. Garnett aptly points out in his
10 reply, uncovering information withheld and suppressed by the State is a difficult task, even with the
11 assistance of counsel. If the State did withhold evidence, it is because of that withholding that
12 Petitioner could not fully raise the issue during the state proceedings. See Slutzker v. Johnson, 393
13 F.3d 373, 385 (3d Cir. 2004).

14 Considering the fact that Petitioner mentioned the Brady issues in his habeas and personal
15 restraint petition, the fact that the Court must construe Petitioner's pro se filings liberally, see Zichko
16 v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001), and given the nature of his discovery request (i.e., for
17 information allegedly withheld by the prosecution), the Court finds that there is good cause for the
18 discovery. The Court therefore GRANTS Petitioner's motion for additional discovery and ORDERS
19 that the State files relating to James Garnett and Kymberly Garnett and any and all relevant files of
20 the Mt. Vernon Police Department and the Skagit County Sheriff's Office be made available to the
21 Petitioner for discovery purposes.

22 **II. Motion to Supplement Record**

23 Under Rule 7 of the Rules Governing Habeas Cases, Petitioner moves to supplement the
24 record in this case. Rule 7 authorizes the Court to expand the record by the inclusion of additional
25 materials relevant to the determination of the merits of the petition. Here, Mr. Garnett seeks to add
26 evidence that a private foundation eventually gave Ms. Stafford \$5,000 for testifying against Mr.

1 Garnett, and that prosecutors – if not Ms. Stafford herself – knew of this award by the time of trial
2 but did not disclose it to the defense. For the same reasons discussed above, the Court GRANTS
3 Petitioner’s request. The Court ORDERS that the record shall be enlarged to include documents
4 identified in Petitioner’s Motion to Supplement the Record and attached thereto as exhibits A through
5 H.

6 **Conclusion**

7 The Court GRANTS Petitioner’s motions for additional discovery and to supplement the
8 record.

9 Currently pending before the Court are Petitioner’s objections to Magistrate Judge Benton’s
10 Report & Recommendation. Within ten (10) judicial days of this order, Petitioner shall inform the
11 Court whether he wishes the Court to consider his objections as drafted, or whether, given the
12 Court’s rulings, he will request to proceed in a different manner.

13 The Clerk is directed to send copies of this order to all counsel of record.

14 Dated this 9th day of August, 2007.

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16 Marsha J. Pechman
17 United States District Judge
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